

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE COMPLAINT)
OF AT&T COMMUNICATIONS OF THE)
MOUNTAIN STATES, INC. REQUESTING) DOC. NO. 70000-TI-02-773
AN INVESTIGATION INTO QWEST) DOC. NO. 70017-TI-02-26
CORPORATION'S BUSINESS PRACTICES) (RECORD NO. 7333)
IN WYOMING)

QWEST CORPORATION'S MOTION TO DENY AT&T
REQUEST FOR INVESTIGATION

Qwest Corporation, (Qwest) by and through its attorneys, Hickey, Mackey, Evans and Walker, respectfully moves the Public Service Commission of Wyoming (Commission) to deny the request for investigation filed by AT&T Communications of the Mountain States, Inc. (AT&T) and to dismiss this docket. AT&T made its request for an investigation following the filing of a complaint against Qwest by the Minnesota Department of Commerce (DOC) with the Minnesota Public Utilities Commission. AT&T has urged this Commission to investigate whether Qwest has entered into unlawful "secret agreements" affecting Wyoming without appropriate Commission review. As set forth in more detail below, AT&T has provided nothing more than speculation in support of its request for an investigation and has not asserted an issue or filed a complaint with supporting documentation which would provide a basis for this Commission to consider expending its time opening and conducting an investigation.

Review of the type of agreements at issue in Minnesota is not justified by either the language or the underlying policy of the Telecommunications Act of 1996 (the Federal Act). At this time, Qwest has identified only three agreements at issue in the Minnesota complaint that might affect Wyoming. The Commission has already reviewed one of those as part of the Qwest merger. Each of those three agreements is attached as a public document and is being released with the consent of the carriers that are party to the agreements with Qwest.

**AT&T'S COMPLAINT IS SPECULATIVE AND OUTSIDE THE
JURISDICTION OF THE COMMISSION**

1. AT&T initiated this matter by submitting a letter to the Commission informing it of a Minnesota complaint and giving its interpretation of the issues under consideration there. Even AT&T's biased presentation provides no support for its position that the same issues need to be investigated in Wyoming. AT&T provides no examples of any Qwest business practice in Wyoming that would justify a Commission investigation. AT&T simply urges the Commission to investigate Qwest because the Minnesota Department of Commerce filed a complaint against Qwest regarding non-filed agreements relating to Minnesota. This is not a sufficient basis for initiating a proceeding in Wyoming.

2. As a threshold legal matter, Qwest has contended in Minnesota and contends here, that the Commission lacks jurisdiction over the issues raised in the AT&T letter. The Federal Act authorizes the Commission to review and approve interconnection agreements filed pursuant to Section 252(e) to the extent that filing of interconnection terms is required pursuant to Section 252(a)(1). 47 U.S.C. § 252(a)(1)& (e). However, whether or not an agreement is an interconnection agreement which must be filed is a separate matter necessitating an interpretation of the federal law and that is outside the scope of this Commission's jurisdiction.

3. AT&T's complaint does not fall within the scope of the Wyoming Commission's authority to initiate investigations under Wyoming law. AT&T's complaint alleges non-compliance with the Federal Act, and it is the Federal Communications Commission that has the authority to promulgate rules and to hear and investigate complaints regarding implementation of the Federal Act. 47 U.S.C. §§ 201(b) and 208; AT&T v. Iowa Public Utilities Bd., 525 U.S. 366 (1999).

In comparison, the Wyoming Commission only has authority to "regulate telecommunications companies . . . as provided for in [the Wyoming Telecommunications Act of 1995]." W.S. § 37-15-401(a)(vi). This provision does not authorize the Commission to

conduct an investigation into claimed failure to comply with federal law. U.S. West Communications, Inc. v. Public Service Comm'n, 988 P.2d 1061 (Wyo. 1999) ("[The Wyoming Supreme Court] cannot, as the Commission urges, transfer the general intent of the Federal Act to confer specific powers on the Commission which were not given by the Wyoming legislature. Consequently, we must find that the Commission went beyond its statutory authority in determining whether there was a violation of the Federal Act and, therefore, vacate that portion of the Commission's decision."). The Commission's power to conduct investigations under the 1995 Wyoming Act and W.S. § 37-2-117 is limited to insuring compliance with Wyoming law and Commission orders. (W.S. § 37-15-408 incorporates W.S. § 37-2-117 into the 1995 Wyoming Act).

5. The Minnesota DOC complaint, and the issue raised in AT&T's letter to the Wyoming Commission, present questions of interpretation of the Federal Act: where is the line drawn between (i) terms and conditions of interconnection that must be filed for prior state commission approval under Section 252 of the Federal Act; and (ii) other ILEC-CLEC contract provision that do not fall within this mandatory filing requirement? Thus, because this is a question of the interpretation of

section 252 of the Federal Act, this Commission does not have the authority to conduct the investigation requested by AT&T.

**ADDITIONAL FILING OF CONTRACTS IS INCONSISTENT
WITH SPECIFIC PROVISIONS OF THE FEDERAL ACT AND ITS
UNDERLYING PURPOSE**

6. Even if the Wyoming Commission had the jurisdiction to review this issue of federal law, the contract provisions at issue in Minnesota do not require filing with state commissions under Section 252 of the Federal Act. ILECs enter into many contractual arrangements with CLECs, just as they do with other customers and vendors every day. Yet, the Federal Act does not require literally every provision of every ILEC-CLEC contract to be filed for state commission approval. The Minnesota DOC agrees, and is complaining about only certain selected provisions from its review of all the contracts entered into between Qwest and Minnesota CLECs since the start of 2000.

7. The contracts in the Minnesota matter fall into four general categories, none of which implicate Section 252 of the Federal Act:

- a. **Agreements that define business-to-business procedures at a granular level.** Many of the provisions cited by the Minnesota Department of Commerce involve business processes that go beyond the level of detail required for a Section 252 filing. For example, Qwest has committed to CLEC-specific escalation procedures for dispute resolution, or actions to address CLEC-specific business issues regarding their use of UNEs. Qwest, like any vendor, tailors its implementation processes to meet the varying needs of its customers.

- b. **Agreements to settle disputes.** Other provisions are included in agreements that settled ongoing disputes between the parties. These matters typically relate to differences between Qwest and a CLEC over their respective past performance under an interconnection agreement, or billing disputes between them. In these instances, the parties have resolved their disputes without troubling state commissions. Section 252 does not require filing such settlements as interconnection agreements for state commission approval.
- c. **Agreements implementing Commission orders.** In at least one assertion, the Minnesota DOC complained about provisions where Qwest is simply stating that it will comply with the Minnesota Commission's orders pending further proceedings. This is not an activity that requires state commission scrutiny.
- d. **Agreements on matters outside the scope of Sections 251 and 252.** Some of the Minnesota DOC complaints go to agreements that are unrelated to Section 251, and therefore, do not implicate Section 252 at all. For example, the DOC cites one provision dealing with the carrier access rates that the CLEC charges Qwest for terminating Qwest's intraLATA toll service. In another case, Qwest is buying non-regulated services from the CLEC.

8. There are a number of policy reasons to reject a broad interpretation of the filing requirements contained in Section 252. First, a broad reading would require ILECs and CLECs to file many more of their agreements than intended by the Federal Act. This would unnecessarily burden all state commissions with added time-consuming review proceedings, resulting in a delay of the effective dates of those agreements. This micro-regulation is the antithesis of the Federal Act's deregulatory intent.

9. An interpretation of Section 252 that unnecessarily increases the number of agreements subject to Commission review is inconsistent with the Federal Act's goal of encouraging direct negotiations between ILEC's and CLECs—subject only to the specific minimum pre-approval requirements for those provisions within the scope of Sections 251 and 252. Qwest is always willing to enter into good-faith negotiations with CLECs on business issues of interest and concern to them, and to negotiate with and accommodate the concerns of the full range of its wholesale customers, large and small. Like most businesses, CLECs often prefer to keep business terms confidential. Qwest respects the proprietary information of its customers.

10. The Federal Act sets limits on normal business confidentiality; core terms of interconnection must be filed and approved. But an overbroad reading of Section 252 would not only amount to *de facto* regulation of business arrangements, it would interfere with the incentives and the ability of parties to reach agreement in areas outside the actual scope of the Act.

**THE THREE CONTRACTS RELEVANT TO WYOMING DEMONSTRATE THERE
IS NO NEED FOR A COMMISSION INQUIRY**

11. Qwest has nothing to hide regarding the agreements cited by the Minnesota DOC. As Qwest did in Minnesota, and with the consent of the other parties to the agreements, Qwest is submitting for the Commission's benefit copies of the three

agreements identified in the Minnesota complaint that involve CLECs operating in Wyoming. (see Attachment A).

12. There are two agreements with McLeod and one with Covad, all of which fall outside the scope of Section 252 and do not require Commission review. The Covad agreement and the McLeod letter agreement regarding escalation procedures and dispute resolution fall into the category of detailed business procedures described in Paragraph 5(a) above. The third agreement, the Confidential Billing Settlement Agreement with McLeod, was already reviewed by the Commission during its consideration of the Qwest merger. After reviewing the contract, the Commission did not highlight any concerns about the document, concluding "that the agreement was not relevant to its decision in the case." (*US WEST/Qwest Merger Order* at ¶ 53, Docket No. 74142-TA-99-16, etc.).

13. Qwest has taken strong exception to the Minnesota DOC's allegations that it has discriminated against some CLECs. Qwest has provided all CLECs with the same basic rates, terms and conditions of interconnection, as required by Section 251. Qwest has met its obligations under Section 251 on a materially equal basis, leaving room for the inevitable differences among its wholesale customers with respect to administrative process, as reflected in the attached contracts. Similarly, Qwest does

not violate Section 251 non-discrimination provisions when it settles disputes with CLECs on terms satisfactory to them, allowing the CLEC and Qwest to avoid the uncertainties and delays of litigation. Under these circumstances, there is no basis or need for this Commission to proceed with an investigation.

CONCLUSION

AT&T has filed a request for investigation with the intent of expanding Minnesota's proceedings into Wyoming. Yet, it has provided no grounds for an investigation of contract filings in Wyoming. Even if it had, the question of whether Qwest has properly filed its contracts is a federal question and outside the scope of the Commission's investigative authority under Wyoming law. The contract filing urged by AT&T and at issue in Minnesota is not required under Section 252 of the Federal Act and would frustrate the purposes of the Federal Act by discouraging ILECs and CLECs from negotiating with each other to resolve business disputes. Finally, Qwest has disclosed the relevant Wyoming contracts at issue in the Minnesota case and they do not raise any issue requiring further Commission investigation. For these reasons, Qwest respectfully requests that the Commission dismiss the AT&T complaint.

Dated this day of April, 2002.

QWEST CORPORATION

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CERTIFICATE OF SERVICE

I certify that the foregoing was served on the ____ day of
April, 2002 by U.S. Mail, postage prepaid, to the following:

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